

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GARY WAYNE LOWE, #470610	§	
VS.	§	CIVIL ACTION NO. 2:12cv394
DIRECTOR, TDCJ-CID	§	

ORDER

Petitioner Gary Wayne Lowe, an inmate confined in the Texas prison system, filed the above-styled and numbered petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition was referred to United States Magistrate Judge Roy S. Payne.

The petition was dismissed with prejudice on September 14, 2013. Lowe did not appeal the decision, and it became final. On November 14, 2014, Lowe filed a motion to set aside the judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. Magistrate Judge Payne issued a Report and Recommendation concluding that the motion should be construed as a successive petition under 28 U.S.C. § 2254 and dismissed without prejudice for lack of subject matter jurisdiction.


Lowe has filed objections. He argues that he should be able to file the motion. However, the Report and Recommendation appropriately explained how the motion must be construed as a successive petition and dismissed without prejudice for lack of subject matter jurisdiction because Lowe did not show that the Fifth Circuit granted him permission to file a successive petition.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by Lowe to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections by Lowe are without merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

ORDERED that Lowe's Rule 60(b) motion is construed as a successive petition under 28 U.S.C. § 2254 and **DISMISSED** without prejudice for lack of subject matter jurisdiction. It is further **ORDERED** that a certificate of appealability is **DENIED**. It is further **ORDERED** that all motions not previously ruled on are hereby **DENIED**. It is finally **ORDERED** that the Clerk of Court shall return unfiled any new petition for a writ of habeas corpus submitted by Lowe regarding his convictions unless he shows that he has received permission from the Fifth Circuit to file it.

So Ordered and Signed on this

Jul 20, 2015



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE